IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

PRESENT

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 13828 of 2005

-

Date: 03.10.2005

-

Between:

1 Dangati Susheela, W/o Krishna Rao and 23 others.

..... PETITIONERS

AND

1 The District Collector, Collectors Office, Visakhapatnam and two others.

.....RESPONDENTS

-

ORDER:

This writ petition has been filed by the petitioners, who are 24 in number, with a prayer to issue writ, order or direction more particularly one in the nature of writ of *Mandamus* declaring the action of the respondents in not completing the Land Acquisition Proceedings notified *vide* Section 4(1) Notification issued by the first respondent dated 25.02.2003 as illegal, null and void.

The petitioners claim that they are in occupation of the lands, which are sought to be acquired by the respondents, under the provisions of the Land Acquisition Act (for short 'the Act'). The grievance of the petitioners is that petitioners 1 to 7 purchased the properties in question under Agreement of Sale and they have been residing there since the date of purchase and that the respondents are not considering their claims in respect of the said property for payment of compensation as well as inclusion of their names in the Rehabilitation Scheme. Further, the respondent-authorities appointed Village Committees, with regard to the ownership of the properties under Acquisition, which is not recognized under the provisions of the Act. Thus, any order passed on the enquiry conducted by the Village Committees, is not legal and appropriate.

A counter-affidavit has been filed on behalf of the respondents. Mr.B.Bhavanidas, Special Deputy Collector, Land Acquisition, APIIC, SEZ, Unit-I, Visakhapatnam-second respondent, has sworn to the counter-affidavit. It is stated in the counter-affidavit that a Draft Declaration, as required under Section 6 of the Act, has been issued in respect of the said lands *vide* proceedings R.Dis.No.700/2003 G2 dated 14.07.2003 by the Collector and the same was published in the Visakhapatnam District Gazette No.11/2003 dated 17.07.2003. The enquiry under Section 5-A was dispensed with invoking urgency clause under Section 17(4) of the Act. Thereafter, P.V. Proposals, in respect of the said lands, have been submitted to the Joint Collector, Visakhapatnam and the same were approved *vide* Proceedings Rc.No.5965/2002 G2 dated 22.01.2005 by the Joint Collector, Visakhapatnam. Thereupon, Notices, under Section 9(1) and 10 of the Act, were pasted at conspicuous places in the Village. Notices under Section 9(3) and 10 of the Act

were also issued by the Land Acquisition Officer on 05.02.2005. All the petitioners are non-residents of Dibbapalem, Hamlet of Pedagantyada Village. They have purchased small pieces of lands and constructed small houses with A.C roof and thatched houses and none of them are residing in the said houses and are residing in others Villages. Having came to know that Notices under Section 9(3) and 10 of the Act have been issued, and Petitioners 8,12 to 15, 18, 21 and 22 have came to the village and accordingly the said Notices were served on them including other land owners asking them to appear before the Land Acquisition Officer for Award enquiry on 25.02.2005. It is further stated in the counter-affidavit that since Petitioners 1 to 7, 10 and 11 have occupied the village site (Grama Kantham) their names have not been published in the Notification under Section 4(1) of the Act and thereby Notices, under Sections 9(3) and 10 of the Act, were not served on them. Notices have been served on 25.02.2005 itself on the remaining petitioners 9,16,17,19,20,23 and 24, who are also residing in other villages and who have also come to the village on 25.02.2005. But none of the petitioners, on whom notices already served, have turned up for Award enquiry on 25.02.2005. Therefore, the Award Enquiry has been adjourned from time to time and it was finally posted on 30.07.2005 and was concluded on the said date. The sum and substance of the counter-affidavit is that Award is not yet passed.

Heard the learned counsel appearing for the petitioners and the learned Government Pleader for Land Acquisition appearing for the respondents.

Learned counsel appearing for the petitioners submits that the respondents are proceeding with the Award Enquiry basing on the enquiry conducted by the Village Committees, whose existence is not recognized under the provisions of the Act. Further, petitioners 1 to 7 purchased the properties under Agreements of Sale and they have been in possession and whereas, petitioners 8 to 24 purchased the properties under Registered Sale deeds and entered into possession of the property on the respective date of sale deeds and since then they are in continuous possession. He further submits that since possession has not been taken for three months after invoking the urgency clause, the authorities have to conduct enquiry under Section 5-A of the Act. In respect of the said submission, he referred to Section 17(5)(a)(b) of the A.P. State Amendment Act, which reads as follows:-

> “(5)(a):- In any case where the State Government have directed under Section (4) that the provisions of Section 5-A

shall not apply, the Collector shall take possession of the land within three months thereof.

(b) If however the Collector fails to take possession of the land within the aforesaid period of three months, the provisions of Section 5.A shall apply as if there is no such direction that Section 5.A shall not apply, and in all such cases the period of thirty days referred in Section 5.A shall be reckoned from the date of expiration of 3 months specified in clause (a)."

The learned Government Pleader for Land Acquisition submits that petitioners 1 to 7 are not entitled to any compensation since they have occupied the village site (Grama Kantham).

It is not in dispute that the possession of the lands has not been taken despite three months period has been elapsed from the date of notification of the urgency clause, in which case, the authorities are required to conduct enquiry under Section 5-A of the Act. The petitioners are at liberty to file objections during the Enquiry under Section 5-A of the Act and can raise all objections that are sought to be raised in this writ petition. The authorities have to consider their objections while passing the Award.

With the above observations, the writ petition is disposed of. No order as to Costs.

_____

(B.Seshasayana Reddy, J)

Date: 03.10.2005

Note: Furnish copy in 3 days
B/o
va